



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol **The Constitutional and Legislative Affairs Committee**

Dydd Llun, 15 Ebrill 2013
Monday, 15 April 2013

Cynnwys **Contents**

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest

Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau Sefydlog Rhifau
21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or 21.3

Tystiolaeth mewn Perthynas â'r Bil Teithio Llesol (Cymru)
Evidence in Relation to the Active Travel (Wales) Bill

Cynnig ynghylch Cyfarwyddeb gan Senedd Ewrop a'r Cyngor Ewropeaidd i Sefydlu
Fframwaith ar gyfer Cynllunio Morol Gofodol a Rheoli'r Arfordir yn Integredig
Proposal for a Directive of the European Parliament and of the Council Establishing a
Framework for Maritime Spatial Planning and Integrated Coastal Management

Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In
addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

| | |
|-----------------|--|
| Suzy Davies | Ceidwadwyr Cymreig Welsh Conservatives |
| Vaughan Gething | Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James) |
| David Melding | Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair |
| Eluned Parrott | Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats |
| Simon Thomas | Plaid Cymru The Party of Wales |

Eraill yn bresennol
Others in attendance

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|-------------------------|---|
| John Davies | Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government |
| John Griffiths | Aelod Cynulliad, Llafur (y Gweinidog Diwylliant a Chwaraeon) Assembly Member, Labour (the Minister for Culture and Sport) |
| Victoria Minshall-Jones | Arweinydd y Tîm Deddfwriaeth, Llywodraeth Cymru Legislation Team Leader, Welsh Government |

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

| | |
|-----------------|---|
| Gwyn Griffiths | Uwch-gynghorydd Cyfreithiol Senior Legal Adviser |
| Ruth Hatton | Dirprwy Glerc Deputy Clerk |
| Siân Richards | Y Gwasanaeth Ymchwil Research Service |
| Owain Roberts | Y Gwasanaeth Ymchwil Research Service |
| Lisa Salkeld | Cynghorydd Cyfreithiol Legal Adviser |
| Nia Seaton | Y Gwasanaeth Ymchwil Research Service |
| Gareth Williams | Clerc Clerk |

Dechreuodd y cyfarfod am 2.46 p.m.
The meeting began at 2.46 p.m.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. We have apologies from Julie James, and I am pleased to welcome Vaughan Gething as her substitute. Vaughan, of course, has been a regular attender at these meetings. We do not expect a routine fire drill, so, if we do hear the alarm sounding, please follow the instructions of the ushers, who will help us to leave the building safely. Please switch off all electronic equipment completely. These proceedings will be conducted in Welsh and English. When Welsh is spoken, interpretation is on channel 1, and channel 0 will provide an amplification of our proceedings.

2.47 p.m.

**Offerynnau nad ydynt yn Cynnwys Unrhyw Faterion i'w Codi o dan Reolau
Sefydlog Rhifau 21.2 neu 21.3
Instruments that Raise No Reporting Issues under Standing Order Nos. 21.2 or
21.3**

[2] **David Melding:** Item 2 concerns items that do not raise reporting issues, but they are, however, listed. Do Members have any points that they wish to raise?

[3] I would just say that CLA235, the Food (Miscellaneous Amendment and Revocation) (Wales) Regulations 2013, involves such substances as arsenic, chloroform and ungraded eggs. I think that this matter needs greater clarity than perhaps is presented in the explanatory memorandum. In fact, the memorandum is really quite poor, and the whole interplay between these regulations and the European Commission regulations is not drawn out very well. It is also confusing about why some regulations are going to be removed because of duplication and how the full force of public health is being maintained in the legislation that remains. Do we want to make a comment about the use of explanatory memoranda? They are there to reassure us about these things. I do not think that I am being flippant in mentioning things that relate to the Arsenic in Food Regulations 1959 or the Chloroform in Food Regulations 1980—I do not know much about it, but it sounds a little concerning, does it not? So, I think that an explanatory memorandum that was better constructed may have been appropriate in this case. So, you might be minded to allow me to write to that effect.

[4] Are there any other points?

[5] **Vaughan Gething:** Is this because of the subject matter of the regulations, or are you making a more general point about explanatory memoranda and how they are set out for things like this under a negative procedure?

[6] **David Melding:** I think the problem here is that EC regulations are involved that revoke some regulations on the basis that they are now redundant, and it has not been very clearly explained how they can meet their objectives in the legislation that remains. I think that that perhaps needed to be more fully explained. I take it that our lawyers are relatively satisfied that what they want to do is okay; are you?

[7] **Mr Griffiths:** Yes.

[8] **David Melding:** However, if anyone was reading this in the explanatory memorandum to reassure themselves about the important policy of food safety and public health, then, unless they were a lawyer, they would have been nonplussed by it, really.

[9] **Mr Griffiths:** Yes, I think that is right. Legally, there is no problem.

[10] **David Melding:** Otherwise, we would have made a merits report.

[11] **Mr Griffiths:** We get a very wide range of explanatory memoranda, some of which are very clear and helpful and others that are not. So, reminding them of the need to make explanatory memoranda—

[12] **Vaughan Gething:** Is that the point to make? That is, that several former explanatory memoranda were very helpful, but this one was not. Should we look for greater clarity and consistency on that?

[13] **David Melding:** Yes, I think that that is the tenor of what we should write or include in the letter. Thank you. There are no other queries.

[14] Item 3 is being postponed until our next meeting. I apologise that we are not in a position to take item 3 forward at the moment, but we will do so next week.

[15] Item 4 is the evidence that we will take in relation to the Active Travel (Wales) Bill. The Minister and his team will shortly join us. We are a little ahead of schedule. We will adjourn for a short period so that we can start item 4 at 3 p.m..

*Gohiriwyd y cyfarfod rhwng 2.51 p.m. a 3 p.m.
The meeting adjourned between 2.51 p.m. and 3 p.m.*

Tystiolaeth mewn Perthynas â'r Bil Teithio Llesol (Cymru) Evidence in Relation to the Active Travel (Wales) Bill

[16] **David Melding:** I am delighted to welcome John Griffiths, the Minister for Culture and Sport and the Member in charge of the Bill, and his officials. Minister, do you want to introduce your officials?

[17] **The Minister for Culture and Sport (John Griffiths):** I will allow them to introduce themselves, Cadeirydd.

[18] **Ms Minshall-Jones:** I am Victoria Minshall-Jones, Bill manager for the Active Travel (Wales) Bill.

[19] **Mr Davies:** I am John Davies, and I am a lawyer in Legal Services in the Welsh Government.

[20] **David Melding:** I welcome you all. I think that you know how these sessions are conducted. We have a series of questions and each Member has been allotted a section of the Bill to examine. I will start by asking you, Minister, how the Government went about striking the balance between the powers on the face of the Bill and the powers conferred on Welsh Ministers in terms of issuing directions and guidance.

[21] **John Griffiths:** In the usual way of these things, Cadeirydd, we looked at what will require frequent change, what is technical in essence, and what will need to be tailored to specific local circumstances and situations, allowing those given duties under the legislation the necessary flexibility and ability to respond to the local circumstances that they know best. We also looked at what is essentially supportive in nature in assisting those required to deliver on the legislation, rather than making requirements that should properly be set out in legislation.

[22] **David Melding:** The Bill contains seven powers to make directions, six powers to issue guidance, one Order-making power, which is just to commence the Bill, and no regulation-making powers. We think that this is a record in terms of the balance—we have never seen this before. Can you add a bit of detail as to why you have come up with this structure? Since the Government decided to proceed in this manner, has it reflected on the concerns of the Welsh Local Government Association about how the balance has been struck? Has it also reflected on the issue that Sustrans Cymru raised about how the whole aspect of guidance can be properly scrutinised, given that the Bill will not have a routine legislative process attached to it?

[23] **John Griffiths:** My knowledge of legislation throughout the UK is not extensive enough for me to offer an opinion as to whether this is—

[24] **David Melding:** We are talking about a record here; we are not talking about other legislatures in the UK.

[25] **John Griffiths:** What we have done, Cadeirydd, is to very much look at the responses to the White Paper. Although there have been some concerns, as you mentioned, by the WLGA and Sustrans, there was an overwhelming feeling that those matters proposed to be dealt with in guidance and directions most properly sit there. I had a meeting with Sustrans earlier today, and I think that quite a lot of the concern is with regard to having the necessary involvement in working up the guidance. We have a working group and an external reference group, but we have not yet got to the stage where those groups have been involved with the guidance. However, there is an understanding that we very much intend to continue what has been a very good level of involvement and engagement up to now as we work up those sets of guidance. I hope that that will offer considerable reassurance regarding those concerns. However, it is a matter with which we are all familiar in trying to strike the appropriate balance, and in terms of what I mentioned earlier: technicality, the need for frequent change, responsiveness and flexibility for local circumstances. What we propose is the best way forward.

[26] **David Melding:** We will go into some of the details of these issues. Perhaps we could take it up when we deal with the particulars.

[27] **Suzy Davies:** I have a different, more general question.

[28] **David Melding:** On the principle of the balance, if that is what it is.

[29] **Suzy Davies:** I am pleased that this is a Wales-only piece of legislation. However, bearing in mind the nature of its content, what consideration did you give to bringing those principles forward through regulation to existing legislation, albeit England and Wales legislation, to which you referred in the explanatory memorandum? What new powers do you have as a result of this?

[30] **John Griffiths:** This is a fairly novel piece of legislation and it is an agenda that has a considerable level of support across Wales. We think that that is true across the political spectrum and a range of organisations and local authorities. So, our starting point is that this is an important, radical piece of legislation that rightly requires primary legislation, and it is viewed in that way by quite a wide spectrum of organisations, and indeed, across the political parties in Wales. There is also support, as a result of our extensive engagement around the White Paper and otherwise, for primary legislation as the proper vehicle for a radical and different way to take purposeful travel forward in Wales, whether it is walking or cycling.

[31] **David Melding:** I have a final question, which relates to any discussions that the Government or your officials have had with the UK Government, especially over any issues of competence in relation to the Bill. Are there any issues of which we should be made aware at this stage?

[32] **John Griffiths:** When the White Paper on the Bill was published in May last year, the then Minister for Local Government and Communities, who also had responsibility for transport, liaised with the other devolved administrations and the UK Government regarding our proposals. Indeed, our officials subsequently met with Department for Transport officials to discuss the Bill. When Sustrans held an event last summer, there was official UK Government attendance. So, there has been engagement and liaison. As far as I know, the UK Government has not raised any concerns. I do not know whether our officials would like to

add anything.

[33] **Ms Minshall-Jones:** Certainly, the UK Government has not raised any issues of competence, as far as we know. We had a consultation response from the Ministry of Defence in its role as a landowning body, as would usually be expected in these circumstances. That was about the provisions of the Bill and not about the competence.

[34] **Suzy Davies:** I want to ask you some questions on section 2, Minister. There is a power here to designate, by direction, a locality or the description of a locality. How would you use that power in practice—a direction, rather than another form of requirement? Why have you chosen a direction for this?

[35] **John Griffiths:** It gives us flexibility and speed of decision making. Already, many examples of difficulties that might arise have been quoted. If we used a population threshold of settlements for inclusion in the mapping, for example, people have mentioned settlements on the Taff trail that would not be covered by a threshold of 2,000, which is a figure that has been mooted. They feel that the exclusion of that settlement would not make sense in terms of the purpose of the legislation, because of its proximity to the Taff trail, which is an important route for purposeful travel. So, we feel that exercising powers of direction would give us the necessary flexibility to respond to those issues as we go forward. So, if there is an obvious anomaly, we can very quickly rectify that. It is really for speed of decision making and necessary flexibility as to whether a population threshold is used or indeed some other system, such as a list of settlements covered.

[36] **Suzy Davies:** It offers an opportunity to people who may not be completely certain that you have made the right decision to come back to you and say ‘Can you tweak this?’

[37] **John Griffiths:** Yes, indeed.

[38] **Suzy Davies:** Regarding section 2(4), on the requirement of local authorities to take certain things into account when considering whether it is appropriate for a route to be regarded as an active travel route, one of the things that your explanatory memorandum speaks of quite a lot is safety. Perhaps you might like to explain whether you will be introducing the word ‘safety’, or the concept, into the guidance or directions that relate to this particular section. Can you give us some examples of matters that could be included in the statutory guidance around this particular section? What do you think might be included in that guidance?

[39] **John Griffiths:** First, let me say that it is absolutely clear that safety is crucial if we are going to get the sort of change in behaviour and shift in method of travel that we want to see. Throughout the process, it has become abundantly clear that many people, very understandably, put safety at the top of their list in terms of what would encourage them to get on their bikes or walk rather than travelling by car. So, although we have not, as far as I am aware, thought specifically about exactly what would be in this guidance with regard to safety, given that background, issues of safety would be very important in our thinking and in the formulation of the guidance.

[40] **Suzy Davies:** Do you not think it important enough to put on the face of the Bill, bearing in mind that, in other regulations relating to other pieces of legislation, there are different descriptions of safety, for example? It would be a chance to clarify, once and for all, what you think safety means, perhaps.

[41] **John Griffiths:** It helps in terms of necessary flexibility and adapting to local circumstances and situations. Obviously, there will be quite different routes from one local authority to another, because of their own geographical and particular make-up. It is

necessary to have that flexibility, and we could again be getting into quite technical areas and, indeed, changes in technology that would be important as we go forward. Also, where we have fairly innovative schemes in one area, we would very much look to replicate those elsewhere, and it would be important again to have the flexibility and speed of operation to have that system in place.

[42] **Suzy Davies:** Bearing in mind what you just said about flexibility and different areas needing different types of provision, how will statutory guidance help? That, in and of itself, will be fairly rigid, will it not?

[43] **John Griffiths:** Through statutory guidance we can have a meaningful process of consultation, including public consultation as we go forward with it. We will very much involve the stakeholder groups, as I mentioned earlier, in working it up. That will not simply stop when the guidance is in place; we will have ongoing engagement beyond that. Wherever there is a need for tweaking, we can deal with that quickly through guidance—much more quickly than would be the case if we had put it in subordinate legislation, properly so-called, if I can put it that way.

[44] **Suzy Davies:** I will just ask you one brief additional question. Throughout the Bill, there is a reference to local authorities having to take notice of guidance and directions. However, with regard to the Welsh Ministers' own Bills—perhaps I could refer to one example in section 1(d)—Welsh Ministers only have to have regard to the 'desirability' of certain provisions. Can you explain the difference between the different weighting, if you like, between Welsh Ministers having to have due regard to desirability of something, whereas local authorities just have to 'have regard to' something?

[45] **John Griffiths:** That is a very good question, and I will refer that to John.

[46] **Mr Davies:** Sorry, can you repeat the section in the question?

[47] **Suzy Davies:** I am just using section 1 as an example. If you look at section 1(c), local authorities have to 'have regard to' those integrated network maps, on this occasion. Further down, in section 1(d), Welsh Ministers only have to have regard to the 'desirability of enhancing the provision'.

3.15 p.m.

[48] **Mr Davies:** That (d) applies to Welsh Ministers and to local authorities.

[49] **Suzy Davies:** What is the distinction?

[50] **Mr Davies:** It is probably very little, to be perfectly honest.

[51] **Suzy Davies:** It is simply 'due regard' and 'due regard' effectively, then.

[52] **Mr Davies:** Yes.

[53] **Suzy Davies:** Okay, thank you.

[54] **David Melding:** Vaughan Gething has the next questions.

[55] **Vaughan Gething:** Thank you, Chair. Minister, I would like to go through some of the areas about existing routes maps in section 3. To start, why do you take the view that this should be dealt with by guidance rather than by regulation in particular? There is the point about, for example, how any consultation should be run. Why did you set that balance about

guidance and not regulation?

[56] **John Griffiths:** It comes back to the sorts of issues that we have already mentioned in terms of that necessary flexibility, and also, very much, technicality. Much of this will be quite technical, which is why it is so important that we get the working group's involvement in making sure that this guidance is worked up in an inclusive way that really does take on board all the on-the-ground issues. There is a series of common factors to the questions around whether regulations rather than guidance are the most appropriate mechanism. It is very much on that territory, as we explored in reply to the Chair's initial general question. It is about flexibility, the local authority's own particular circumstances, and the speed of operation. As I said, it is about technicality, including technological change, as we go forward with the apps that may well be relevant, as well as about spreading best practice with speed from one area to another, where improvements are replicable.

[57] **Vaughan Gething:** Thinking about what you have just said, Minister, and your rationale for guidance rather than regulation, this section states that the maps have to be submitted to you to approve. It also states in section 3(7) that local authorities have to keep them under review and revise them, and they may revise existing routes maps. I am interested in a few different points, such as, given that this is a scheme that you expect to introduce in the near future, whether more information on the face of the Bill about the initial scheme would be appropriate, so that there would be greater ability to, if you like, scrutinise that at the outset. But then also, when you think about how a local authority under section 3(7) may review or revise, how does that link back, or does not link back, to the duties that you have at the front of that section? If a local authority wants to revise its map, I am not sure whether the section as drafted means that you then have to approve that revised map. We are talking about three-year cycles here, as well, are we not? Could you deal with those two points, Minister? I will then come to my final point about directions.

[58] **John Griffiths:** It is very important that there is due ministerial ability to ensure that we get the improvement and the progress that this Bill has as its objective. I know that there have been many questions—which may not be the province of this committee particularly—about whether you have targets, what monitoring and evaluating there is, and what sanctions there might be, and so on, to ensure that there is effective delivery. Therefore, it is important in terms of the maps—the initial mapping, the integrated routes maps, and any revisions—that due ministerial approval is required. We need to be sure that the Welsh Government is able to, confidently, expect that this legislation, and the approach to this legislation, will lead to the improvements that are so important in many respects. Therefore, it is right that there is that requirement in the guidance. However, if we had put any of this on the face of the Bill, I think that we would have run into those difficulties in terms of frequent change, the speed of change, the difficulty of change, and flexibility. Therefore, again, I believe that the balance is just about right on those matters.

[59] **Vaughan Gething:** You envisage that there may be additional change. Section 3(7) indicates that, once the maps have been approved by you, local authorities have to review them and may revise them. I do not understand whether the guidance that you will issue will cover how or why they may review or revise them. A map that you approve and that may not come up for you or for a successor Minister to approve in three years' time may be revised in a form that is significantly different. So, I do not understand how the duty to revise and review is encapsulated and how you expect to provide a level of consistency and scrutiny for that. Is it going to be contained within the guidance or not? If it is, it would be helpful to make that clearer than it is at present, about how you expect local authorities to behave.

[60] **John Griffiths:** Those are matters for guidance, but we are obviously not yet at the stage of working out the guidance itself, to spell that out. In due course, we will be. Those are very much matters for guidance and will be dealt with therein.

[61] **Vaughan Gething:** You effectively have the same scheme in section 4 with the integrated network maps. This comes back to the Chair's general point, but in relation to these particular areas, I am interested in how you would envisage the consultation being run. It does not really give any clue about how that consultation could be run and who would run it. I would be surprised if there was not some way, on the face of the Bill or in a regulation, to be much clearer about what that consultation must or may constitute to be effective.

[62] **John Griffiths:** Again, these are matters that will be dealt with in the guidance. Cadeirydd, I guess that this goes back to the initial point that you made about the balance between what is on the face of the Bill and what is dealt with in guidance and directions. In line with what the First Minister has stated, there would obviously be an opportunity for committees, should they wish to do so, to examine that guidance in a timely fashion during the scrutiny process. That is very important. I recognise that a lot of matters are the province of guidance—appropriately so, in my view. However, it is important that there is engagement with committees during the scrutiny process to ensure that the guidance is subject to due process before the legislation is voted upon.

[63] **David Melding:** Any committee can say that it wants to look at a particular piece of guidance. That is a general power that a committee has. However, a process requires you to follow procedure. As far as I can see, in relation to the preparation of these maps and their amendment in the future, there is guidance and you have powers of direction, which is a significant power for the Minister, but there does not seem to be any legislative balance in this, other than that a committee could say, in a reactive way, 'We remember now that this is an ongoing process every three years, so we will have a look at it'.

[64] **John Griffiths:** I think that you accurately describe the situation, Chair. However, this is obviously a question of what will most appropriately deliver on policy, as far as the Government is concerned, while abiding by the due process of scrutiny. I recognise, as I think that my predecessor, Carl Sargeant, did in giving evidence to a different committee, that there will be, as always, various views as to how that balance is best and most appropriately struck.

[65] **Vaughan Gething:** My final question is on the point of balance and the different levels of scrutiny that you are required to undergo. You do not have to undergo any scrutiny here to issue guidance. In terms of the set-up of the initial scheme, would you consider having a different level of scrutiny there and agree that a committee may look at it beforehand? Otherwise, there is not going to be any oversight at all that is required as the scheme goes forward. As you know, many scrutineers may not wish to simply agree to trust the best intentions of a current or future Minister on the way that that scrutiny process would take place.

[66] **John Griffiths:** I would be interested in any proposals or suggestions that this committee might wish to make on that matter.

[67] **Eluned Parrott:** I have a couple of specific questions on individual points and I may want to return to the issue of guidance. Section 5, which looks at the publication of maps, talks about local authorities publishing maps in such a manner as they consider appropriate, copies being sent to persons they consider appropriate, inspections at places they consider appropriate and giving notice in a manner that they consider appropriate. Lots of flexibility and discretion is given to the local authorities. Then, in section 2, it says that authorities will have to have regard to guidance. On the one hand you are giving them flexibility, but, on the other hand, are you saying that you believe that you have given them too much flexibility and that you will have to issue them with guidance on how to use it?

[68] **John Griffiths:** It is very much about striking the balance, again. Local authorities

have various methods by which they disseminate information and publicise their activities and proposals. They also have various means of engagement with their communities and organisations within their areas. We want to work with the grain of that and give them the necessary flexibility, but at the same time, there has to be a ministerial and Welsh Government overview, so that we do, at least, ensure certain minimum standards.

[69] **Eluned Parrott:** Given that local authorities have established ways of working that are appropriate to their local communities, what kind of guidance can you envisage issuing in this particular area?

[70] **John Griffiths:** We could envisage dealing with matters such as the digital divide, which I think is significant, because we want access to be enjoyed by all sections of society. It is very appropriate to use the new technologies, but it is also important to reach those who do not have the internet at home, for example. Anything that ensures that as many people as possible are reached, particularly the more disadvantaged in our local authority areas, would be important issues to address through Welsh Government guidance.

[71] **Eluned Parrott:** Why guidance, and not regulations, in this instance?

[72] **John Griffiths:** Again, I think that it is because of that necessary flexibility to recognise the great variety of circumstances and means of communication that local authorities employ.

[73] **Eluned Parrott:** I will move to section 7 and the issue of securing continuous improvement in active travel routes. Can you tell us what is meant by 'continuous improvement' in this instance?

[74] **John Griffiths:** I do not think that it has any particular legal meaning within this Bill. I think that it very much speaks for itself. Continuous improvement is what it says: improvement that continues. I read your exchange with my predecessor at another committee and I well understand the points that you made, but it is quite accepted as a term. I think that it is used in our local government Measure, so it is understood by local government in Wales.

[75] **Eluned Parrott:** Minister, it is in a Bill, so it will have a legal meaning. We need to understand what that legal meaning is in this particular instance, because we need to understand what will be considered an appropriate level of continuous improvement. Therefore, the definition of what continuous improvement is deemed to be is very important in this place.

[76] **John Griffiths:** It has its general English meaning, rather than a specific particular meaning when used in legislation. So, as you stated in the exchange that I mentioned, if there is half an inch extra on an active travel route, then that is continuous improvement. However, as I think that my predecessor mentioned in the same exchange, we are far more ambitious than that. There will be much around the legislation and in the guidance to ensure that continuous improvement is meaningful.

3.30 p.m.

[77] **Eluned Parrott:** It is difficult to know how meaningful that continuous improvement will be if the guidance is published after the Bill, perhaps by a considerable period of time, and we have no opportunity through a procedure to influence the nature of that guidance. First, will continuous improvement be properly defined in the guidance that you issue on this particular section? Secondly, would it be appropriate to bring forward the publication of this guidance so that the policy objectives and mechanisms can be properly scrutinised?

[78] **John Griffiths:** Obviously, it will be dealt with in guidance, and that has not yet been worked up. However, we will ensure that guidance is available in a timely fashion so that it can be part of the scrutiny process so that we are not asking any Member of the National Assembly for Wales to vote on legislation without understanding what we mean by the terms that we use in that legislation, including the guidance that is issued as part of it.

[79] **Eluned Parrott:** However, you will understand that Members will be nervous because there are 14 powers conferred in this Bill, and there is not a single process for scrutiny included. Do you believe that the balance is appropriate here, because all of the engagement and consultation in the world is still at your discretion? There is no statutory requirement for you to consult the Assembly and to ask for our permission to put forward the guidance, which is the meat and vegetables of the Bill in front of us.

[80] **John Griffiths:** It is important that the guidance is subject to proper scrutiny and that it is available before Members are asked to vote on this legislation, in terms of whether it becomes part of the statute book. I understand that view, and I intend to ensure that that happens. However, the legislation speaks for itself, as well as our understanding the importance of the guidance and the significance of it. As I said earlier, there is quite a widespread level of support across Wales in organisational terms, which was apparent through the engagement process and the White Paper, and, to some extent, across the parties, that this is an important piece of legislation and that what it seeks to achieve is worth while and valuable. So, although I understand the constitutional issues, which are important, the purpose and aim of the legislation is clear from the face of the Bill itself.

[81] **Eluned Parrott:** However, there are concerns, are there not, that the lack of regulation undermines the clout and legal standing of this particular Bill, because there is very little detail? For example, can you give me an idea of what penalties might be applicable for failing to comply with guidance issued in this Bill?

[82] **John Griffiths:** Yes. We are not talking about penalties and sanctions. We believe that we have sufficient levers available to us in terms of general Welsh Government powers and policies. For example, we had the walking and cycling action plan, which will be superseded by an active travel action plan. Within that, we will address monitoring, measurement and evaluation. Crucially, funding mechanisms are available to us as well, given that it will be Welsh Government money that will largely fund the new infrastructure and active travel routes. Obviously, we will have certain expectations, dealt with in the guidance, but funding mechanisms are available to us through that funding to ensure that the legislation is properly and effectively delivered.

[83] **Eluned Parrott:** There will be no penalties, regulations or sanctions. Is a Bill the appropriate vehicle for this, or could this not have been achieved via a strategy?

[84] **John Griffiths:** No, I think that primary legislation is the appropriate vehicle for legislation of this nature, which will be a very important step forward in terms of this area of policy in Wales with cross-cutting benefits. However, it is right that we work in partnership with local authorities, which have already done a substantial amount of work, although we need to build on that in terms of cycle routes and active travel. I believe that we have a widespread level of support for this legislation, which recognises that it is necessary, and we will continue to work up the guidance and thereafter implement it in that partnership approach. With that level of buy-in and support across Wales, it is evident that primary legislation is appropriate and has the necessary support.

[85] **Suzy Davies:** You have partly answered my question. I am trying to get clear in my head, Minister, what you would achieve with this Bill that you do not already achieve with powers that you already have under the Transport (Wales) Act 2006 plus all the levers that

you were talking about a few moments ago. I do not object to you having an Act, but what is extra in here that you do not already have through existing legislation?

[86] **John Griffiths:** There is not a duty at the moment to map existing provision and there is not a duty to set out future provision that will deliver continuous improvement for active travel, with regard to purposeful travel in particular. It is about that modal shift to get people out of their cars.

[87] **Suzy Davies:** You cannot—[*Inaudible.*]—create those duties?

[88] **David Melding:** Some legislation is declaratory, is it not? Also, there is the need to consolidate on a Welsh basis.

[89] **Suzy Davies:** I do not intend to labour the point; I am just genuinely trying to get my head around that distinction.

[90] **David Melding:** You could argue that the Minister's approach fits into that particular category. You are reliant on the phrase 'continuous improvement' and it is not defined. You are then going to take it forward in guidance. There is a danger of there being a lack of grip from the legislative side, especially if it is to carry force. I was just reminded when you were talking that when the founding fathers were drafting the declaration of independence, some of them wanted 'life, liberty and the protection of property' to be the ringing phrase. There was a huge argument about the protection of property, so Jefferson said that the declaration should read 'life, liberty and the pursuit of happiness'. Everyone could agree on the pursuit of happiness because it was just a feel-good phrase. 'Continuous improvement' could end up being that peg to make everyone feel a bit better, could it not?

[91] **John Griffiths:** To just stick with the pursuit of happiness, that was a far-sighted view because we have come around to thinking about happiness as a measure of national success, rather than gross domestic product. [*Laughter.*]

[92] **David Melding:** Yes, but what does it mean? That is the problem. [*Laughter.*]

[93] **John Griffiths:** It must mean something. 'Continuous improvement' is a familiar term to local government through the Local Government (Wales) Measure 2011. There is widespread understanding of what it means.

[94] **David Melding:** It has a set meaning.

[95] **John Griffiths:** It is about driving that continual improvement, which we are all familiar with in Government. You do not rest on your laurels; you must be able to demonstrate progress. It will not be half an inch, as Eluned mischievously suggested in a previous evidence-giving session; it has to be measurable progress, and much more so than that.

[96] **David Melding:** I can see that that is your policy intent but I still have reservations about how that is going to be carried forward in the legislative process that we are now conducting, particularly at the guidance stage. That has been reflected in some of our questions. However, I am keen to move on.

[97] **Simon Thomas:** Rwy'n edrych ar y Bil fel y mae ac yn sylwi bod diffiniad o 'feicwyr' yn y dehongliad, ond nid oes diffiniad o 'gerddwyr'—rwy'n cymryd mai'r diffiniad normal Cymraeg o'r gair sy'n **Simon Thomas:** I am looking at the Bill as it is currently drafted and note that it includes a definition of 'cyclists', but there is no definition of 'walkers'—I assume that the normal definition of the word applies. There

gymwys. Mae diffiniad pendant iawn o 'feicwyr' a byddwch chi, fel y Gweinidog, yn gofyn i'r Cynulliad basio'r Bil hwn gyda'r diffiniad hwnnw ynddo. Fodd bynnag, yn adran 9, unwaith eto rydych yn gofyn am yr hawl i gyhoeddi canllawiau sy'n gallu ehangu cwmpas y Bil i gynnwys defnyddwyr cymhorthion symudedd eraill—beiciau modur, cadeiriau olwyn gyda pheiriant a'r mathau hynny o gymhorthion. A ydych yn glir eto bod canllawiau yn ffordd addas o ehangu'r Bil yn y ffordd hon? Rydych yn mynd o ddehongliad eithaf clir i rywbeth nad yw'n glir iawn wrth inni ymdrin â'r Bil.

is a specific definition of 'cyclists' and you, as Minister, will be asking the Assembly to pass the Bill with that definition included. However, in section 9, again you ask for the right to publish guidance that would allow for the expansion of the scope of the Bill to users of other mobility aids—motorbikes, motorised wheelchairs and those types of aids. Are you clear that guidance is an appropriate way of expanding the scope of the Bill? You move from a relatively clear definition to something that is not very clear as we deal with the Bill.

[98] **John Griffiths:** We are likely to have quite technical guidance on this; that is one of the acid tests of whether guidance is the most appropriate vehicle and whether its content will be very technical in nature. It could come down to the nature of the surfaces that will be provided on the routes and making the maps accessible to the widest range of people. We will also have regular revisions of what is suitable travel infrastructure, because that changes very quickly. We could have some innovative schemes that we would want replicated quickly elsewhere. So, local circumstances require a lot of flexibility on this matter and it will be subject to a good level of public consultation. There have been significant issues for the various groups involved, such as disability groups. We have had good input through the White Paper and the consultation process and we expect that to continue as we go forward with formulating the guidance and with implementation.

[99] **Simon Thomas:** Pam nad yw'n bosibl, felly, yn dilyn yr ymgynghoriad, i fod yn fwy clir ar wyneb y Bil ynglŷn â pha fath o gerbydau—beiciau â chymorth symudedd, neu beth bynnag ydynt—y mae'n bosibl eu cynnwys? Er enghraifft, yn yr adran ddehongli, rydych yn dweud mai beicwyr yw defnyddwyr beiciau pedal ac eithrio'r rhai sy'n gerbydau modur o fewn ystyr Deddf Traffig Ffyrdd 1988. A yw'n bosibl eich bod yn mynd heibio i'r diffiniad hwnnw gyda chanllawiau? Credaf fod rhai cerbydau sydd â chymorth symudedd yn dod o dan y Ddeddf honno. Mae'n bosibl eich bod yn newid, drwy ganllawiau, beth sydd ar wyneb y Bil, ac y mae'n ymddangos i mi mai dyma'r union le y dylech ystyried darparu rheoliadau yn hytrach na chanllawiau.

Simon Thomas: Why is it not possible, therefore, following that consultation, to be clearer on the face of the Bill about what kinds of vehicles—mobility aids or whatever they are—could be included? For example, in the interpretation section, you say that cyclists are users of pedal bikes with the exception of those which are motorised, according to the meaning in the Road Traffic Act 1988. Is it possible that you would go beyond that definition with guidance? I think that some mobility aid vehicles are included under that Act. It is possible that you are changing, through guidance, what is on the face of the Bill and it seems to me that this is exactly where you should consider providing regulations as opposed to guidance.

[100] **John Griffiths:** What you say, Simon, very much emphasises the appropriateness of dealing with these matters in guidance, because there could be frequent change in these definitions and, indeed, in other legislation. I think that it is sensible to deal with it in guidance, which allows for a great deal of flexibility. As you say, there is an issue with the definition of bicycles and electric bikes, where, if the electric element is an aid to getting up a hill, or getting somewhere more quickly for a purpose, that is one thing, but, where it goes beyond that, it is quite another. These matters change quite regularly and guidance is the most appropriate vehicle.

[101] **Simon Thomas:** Ar hyn o bryd, nid yw wastad yn bosibl cymysgu cerddwyr a beicwyr gyda defnyddwyr cerbydau symudedd eraill, ac mae gwahanol batrymau dros Gymru o ran hawliau ai peidio i ddefnyddio'r fath yma o beiriant ar lwybrau o'r fath. A yw'n rhan o'r gwelliant parhaus fod y llwybrau a gynhwysir o dan y Bil hwn yn dod yn agored i bob math o gerbyd felly? Ble mae'r ffin fan hyn? Cerbydau sy'n cael eu defnyddio ar heolydd—ceir? Ble fydddech chi'n gosod y ffin? Rydych yn dweud mai canllawiau sy'n briodol, ond nid ydym ni, fel Cynulliad sy'n deddfu, yn gweld y ffin, ac rydym yn rhoi llawer o ffydd yn y Gweinidog, drwy ganllawiau sy'n gallu newid diffiniad y mathau o gerbydau a all ddefnyddio'r llwybrau hyn.

Simon Thomas: At present, it is not always possible to mix cyclists and walkers with other mobility aided vehicles, and there are different patterns across Wales in terms of rights or otherwise to use this kind of motorised vehicle on such routes. Is it part of continuous improvement that the routes included under this Bill become open to all such vehicles? Where is the boundary here? Vehicles used on roads—cars? Where would you place the boundary? You say that guidance is appropriate, but as a legislative Assembly, we cannot see where the boundary lies, and we are having to place a great deal of faith in the Minister, through guidance that can change the definition of what kinds of vehicles can use these routes.

[102] **John Griffiths:** I do not think that cars would be appropriate, as you used that example. I understand that it raises many issues about the balance between what is on the face of the Bill and guidance, as we have played out throughout this session today. I am sure that the committee will have views that we will carefully consider. Those common matters relating the different aspects of the guidance in terms of flexibility, technical nature, local circumstances, speed of change and so on, are powerful and applicable to the issues that we have raised.

3.45 p.m.

[103] **Simon Thomas:** A throi at sut bydd y Bil hwn yn cael ei weithredu, mae cychwyn y Bil yn glir a dyna'r unig lle lle mae gennych is-ddeddfwriaeth, sef y Gorchymyn i gychwyn y Bil. Rydym yn derbyn hynny; mae hynny'n arferol. Fodd bynnag, yr hyn sy'n nodedig yw bod adrannau 3 i 9 yn dod i rym nes ymlaen yn ôl eich Gorchymyn fel Gweinidog. Pam ydych wedi ei wneud yn y ffordd honno? Yn benodol, gan eich bod wedi dweud wrth y pwyllgor heddiw eich bod yn dymuno y bydd canllawiau yn cael eu cyhoeddi o leiaf ar ffurf drafft cyn ein bod yn deddfu ar y mater hwn, ai eich bwriad yw y bydd y canllawiau hynny ar gael cyn eich bod yn gwneud y Gorchymyn i gychwyn adrannau perthnasol y Bil?

Simon Thomas: To turn to how this Bill will be implemented, the commencement of the Bill is clear, and that is the only place where you have subordinate legislation, namely the Order to commence the Bill. We accept that; that is common practice. However, what is notable is that sections 3 to 9 will come into force later, following an Order from you as a Minister. Why have you chosen to act in that way? Specifically, as you have informed the committee today that you would wish guidance to be published at least in draft form before we legislate on this issue, is it your intention to provide that guidance before you make the commencement Order for the relevant sections of the Bill?

[104] **John Griffiths:** It is as you describe it, Simon, with the guidance. I would want it to be made available, at least in draft form, so as to allow and ensure proper scrutiny. The substantive aspects of the Bill will be commenced by the commencement Order two months after it is passed in the usual way. The other matters are matters of interpretation and so on and not substantive. So, that is the distinction between the two. John, I do not know whether you want to add anything to that.

[105] **Mr Davies:** Sections 1, 2 and 10 to 13 are, effectively, passive provisions; they do

not have a life of their own. Accordingly, it is normal for them to come into force right away.

[106] **Simon Thomas:** So, when would you expect sections 3 to 9 to come into force? You mention in the EM that local authorities need to have different timescales to provide these maps and to do the mapping and the planning. Will all of Wales come together?

[107] **John Griffiths:** Yes.

[108] **Simon Thomas:** So, is it at the speed of the slowest soldier?

[109] **John Griffiths:** No, those substantive provisions would come into effect two months after the legislation was passed by the commencement Order, and the duties would apply to local authorities right across Wales from that day.

[110] **Simon Thomas:** You referred earlier, Minister, to the possibility of looking at least at draft guidelines, which suggests that, in fact, you are not seeking to rush this Bill through the Assembly and, therefore, that you will take some time to make sure that those guidelines are in place and that we see them.

[111] **John Griffiths:** I will be mindful of the need for an adequate opportunity for scrutiny and timeliness, particularly around the guidance, given its significance and importance.

[112] **David Melding:** Thank you, Minister. I think that that concludes our session in terms of the scrutiny that we wanted to conduct with you this afternoon. I am grateful for your attendance and for that of your officials.

3.48 p.m.

**Cynnig ynghylch Cyfarwydddeb gan Senedd Ewrop a'r Cyngor Ewropeaidd i
Sefydlu Fframwaith ar gyfer Cynllunio Morol Gofodol a Rheoli'r Arfordir yn
Integredig
Proposal for a Directive of the European Parliament and of the Council
Establishing a Framework for Maritime Spatial Planning and Integrated Coastal
Management**

[113] **David Melding:** The papers are there for us to note, and we understand that the Scottish Parliament and the UK Government are planning to raise issues in relation to this directive, and we may want to be aware of that. Owain has prepared a briefing note, so if Members have any queries, he is the relevant person for them. Are there any issues? Do you just want to note the paper? I see that you are happy to do so.

3.49 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from
the Meeting**

[114] **David Melding:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).

[115] Does any Member object? I see that no Member objects.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 3.49 p.m.
The public part of the meeting ended at 3.49 p.m.*